

REMARKS/ARGUMENTS

The Office Action of January 24, 2011 and the Communication regarding a defective response dated June 7, 2011, have been reviewed and these remarks are responsive thereto. Claims 1, 5, and 6 have been amended, and claim 2 has been canceled without disclaimer or prejudice. Claims 3, 8, 9-14, 16, 18, and 19 are canceled as being directed to non-elected invention(s). Claims 1, 2, 4-7, 15, and 17 are rejected. No new matter has been added. Reconsideration and allowance of the instant application are respectfully requested.

Rejections under 35 U.S.C. § 112

Claims 6 and 7 stand rejected under 35 U.S.C. §112, second paragraph, as indefinite. Claim 6 has been amended to depend from claim 5 which provides support for “the support.” Withdrawal of this rejection is requested.

Rejections under 35 U.S.C. § 102

Claims 1, 15 and 17 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Pat. Pub. No 2002/0183883 to Carr (“Carr”).

Amended claim 1 is directed to a flexible tube head formed of a plastic material, the head including an opening defined by an edge and a shoulder connecting the edge to a flexible skirt of a flexible tube for packaging a product, the tube head comprising a pivoting cap formed of a plastic material for closing the opening and an electronic component intended to exchange information about the tube and/or its contents with a read or read/write device outside of the tube without any electrical contact, the electronic component being set within the plastic material forming the cap such that there is no adhesive material in contact with the packaged product. (Emphasis added.)

Carr describes a container package including a container and a cap. The container package is intended for packaging a product. The cap is formed of a plastic material and comprises an electronic component intended to exchange information about the container package and/or product with a read or read/write device outside of the container package without any electrical contact. The electronic component is set within the cap.

However, Carr does not describe a container package which is a tube, and thus having a tube head produced independently from a skirt as emphasized above. Indeed, Carr illustrates a bottle which is usually blown so that the reservoir formed by the bottle is shaped, no further welding or over-molding of any “bottle head” over a “bottle skirt” is needed. Further, Carr does not describe a container package that includes a pivoting cap.

Moreover, in Carr, the electronic component is only used for conducting product promotion, storing, and disseminating product information such as product processing information, providing product quality assurance including tamper-evidence, efficient inventory control by enabling tracking of products [paragraph 24 of Carr]. That is, the intent of Carr is to trace the complete package after it has been assembled.

Carr does not teach each and every element of the instant claims; hence, Carr cannot anticipate the instant claims. Withdrawal of the present rejection is requested.

Rejections under 35 U.S.C. § 103

Claim 2 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Carr in view of French Patent No. 2,622,543 to Hermes (“Hermes”). Claim 1 has been amended to recite the limitation of claim 2. Claim 2 has accordingly been canceled. Insofar as this rejection applies to amended claim 1, it is respectfully traversed.

The Office Action cites Hermes as describing a pivoting cap which is made of a plastic material and which is fixed to a bottle so that it is not detached in the open position which eliminates the possibility of a cap being misplaced from an open bottle. This interpretation of Hermes is respectfully in error. That is, the cap described in Hermes detaches in the open position.

The cap in Hermes comprises an insert (2, 3) and an envelope (9). The insert and the envelope are pivotably mounted one with respect to the other. The cap is designed so that during positioning of the cap on top of the neck of the bottle, the insert is first inserted inside the neck of the bottle, and once in position, the envelope is rotated so that its skirt (10) is placed down close to the neck and expands therealong. Projections (11, 12) clip on and abut the neck so that the cap cannot be detached from the bottle when the bottle is lifted up by seizing only the cap.

During opening, the envelope is rotated with respect to the insert so that the skirt moves away from the neck of the bottle. Then, the insert is removed from the inside of the neck of the

bottle. After the bottle is opened, the cap is completely detached from the bottle. In view of the drawings, it is not possible for the insert to be removed while the envelope is still attached to the neck of the bottle.

Consequently, unlike the position taken in the Office Action, Hermes does not describe a pivoting cap which is not detached from the bottle in the open position. Nor is there any reason to modify Carr in view of Hermes to arrive at the instant claim. Neither Carr nor Hermes is directed to a pivoting cap as claimed. Hence, Carr in view of Hermes does not teach or suggest claim 1, as amended, and withdrawal of the present rejection is requested.

Claim 4 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Carr in view of U.S. Patent No. 6,087,198 to Panasik ("Panasik"). Claim 4 depends on claim 1. Claim 1 has been amended as discussed above. In view of such amendment, Carr does not teach or suggest claim 1 and likewise does not teach or suggest claim 4. Panasik does not remedy the defects of Carr.

Panasik is relied on as teaching an electronic component having a thickness of 2-4 microns. Panasik does not teach or suggest placement of the electronic component within a cap, in particular a pivoting cap, as claimed. Hence one skilled in the art would not have modified the closure of Carr in view of Panasik to arrive at the instant claims. Withdrawal of this rejection is requested.

Claim 5 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Carr in view of U.S. Patent No. 3,778,685 to Kennedy ("Kennedy"). Claim 5 depends on claim 1. Claim 1 has been amended as discussed above. In view of such amendment, Carr does not teach or suggest claim 1 and likewise does not teach or suggest claim 5. Kennedy does not remedy the defects of Carr.

Kennedy mentions an electronic component; however Kennedy is not concerned with a tube head but instead is directed to packaging of integrated circuit chips, and thus does not teach or suggest placement of the electronic component within a pivoting cap. Hence one skilled in the art would not have modified the closure of Carr in view of Kennedy to arrive at the instant claims. Withdrawal of this rejection is requested.

Claims 6 and 7 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Carr in view of Kennedy as applied to the above Claim 5, and further in view of U.S. Patent No. 5,944,206 to Cutler ("Cutler") and U.S. Patent No. 6,129,653 to Fredricks ("Fredricks"). Claims 6 and 7 depend on claim 5 which depends on claim 1. Claim 1 has been amended as discussed above. In view of such amendment, Carr does not teach or suggest claim 1 and likewise does not teach or suggest claims 5. Kennedy does not remedy the defects of Carr for the reasons discussed above. Cutler and Fredricks likewise do not remedy the defects of Carr.

Cutler and Fredricks are not directed to electronic components and do not teach or suggest placement of the electronic component within a pivoting cap. Hence one skilled in the art would not have modified the closure of Carr in view of Kennedy, Cutler and/or Fredricks to arrive at the instant claims. Withdrawal of this rejection is requested.

It is believed that no fee is required for this submission. If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 19-0733, accordingly.

Respectfully submitted,
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